VOLUME X.

FLORENCE, PINAL COUNTY, ARIZONA, SATURDAY, APRIL 5, 1890.

FERNANDO MALDONADO, Morence.

GENERAL MERCHANDISE!

A Large and Complete Stock of ---

California XXX

- A SPECIALITY. -

PRICES AS LOW AS THE LOWEST.

Call and be Convinced

W. C. SMITH & CO.

STOVES, TINWARE, LAMPS

Kitchen Furniture, Refrigerators, Crockery, Glassware, Cutlery, Japanware. HARDWARE,

Tools of all kinds, Garden and Lawn Hose, Sprinklers etc.,

Moline Wagons,

Buckboards and all kinds of Road Vehicles, Carriages and Carts. All kinds of Tin, Sheet Iron, Copper Work, Plumb- of the United States shall be limited refusing to sit by joint resolution of look for the definition of the rights ing and Gas Fitting done promptly and satisfactority.

The On Time Mohawk & Charter Oak Stoves

Windmills and Pumping Machinery, Wood's Mowers and the case as to the proper construction the adoption of the constitution, and course sail set Rakes, Oliver Chilled Plows, Barbed Wire, Pumps, Gas and Water Pipes, Horse Powers, Windmills Agricultural Implements, etc.

TUCSON, ARIZONA.

The case is to the proper constitution the adoption of the Constitution, and their reports concurring in this view there in each instance been adopted by these bodies. Even if we regard that the session of the Legislative Assembly is limited therein to sixty the question as a doubtful one, we one. The purpose the results of the constitution, and the adoption of the Constitution of the

Henry E. Kemp & Co.,

WAGONS, BUGGIES AND CARRIAGES,

HARDWARE.

Staves, Tinware, and a general line of

Agricultural Implements.

We buy direct in Carload Lots, and give our Customers the to be drawn therefrom that it has are usually excluded; in the latter, legislative assembly is limited therein

THE MACHINERY DEPOT OFTUCSON,

- A Shop in which all kinds of Machine Repairing-Can be done.

Steam Engines, Heavy Machinery, Windmills,

STEAM AND HORSE POWER PUMPS.

Wrought Iron Pipe, Plumbing, Steam and Gas Fitting. Mill, Mine and Ranch Supplies, Barbed Wire and Iron Roofing. HARDWARE LUBRICATING OILS.

JOHN GARDINER, Tucson.

DO YOU NEED

FURNITURE, Carpets, Crockery, Wall-paper.

If so, we carry the largest and most complete stock in the southwest, which is bought at headquarters and shipped in car load lots. We can give you lower prices than you can get anywhere.

Seattle, Wash. Schoenfeld & Heyman, Phoenix Ariz.

L. ZECKENDORF & CO

TUCSON, A. T.

Successors to Leo Goldschmidt

Furniture, Carpets, Bedding, and

ALL KINDS OF HOUSE FURNISHING GOODS AT LOWEST PRICES Mall orders will receive prompt and careful attention



PRICES REASONABLE

THE DECISION.

the Appropriation Bill and other Acts of the 15th Legisla-

ture Legal. IN THE SUPREME COURT, January act of New Mexico on the same sub-

RGE W. CHEYNEY. for writ of -Against-JOHN Y. T. SMITH,

C. F. Ainsworth, for Plaintiff. Clark Churchill, Attorney General, for Defendant Ben Goodrich, Amicus Curiae.

OPINION BY SLOAN, JUSTICE: The plaintiff herein applies to this in actual session upon sixty working, court for a peremptory writ of man-damus to compel the defendant, as days from the beginning of the ses-Territorial Treasurer, to pay amount sion ended with March 3rd. After of a certain warrant drawn by the said date an act was passed fixing the Territorial Auditor in favor of plain- date for the convening of subsequent tiff, as authorized by sub-division 15 legislatures. This act was followed of section 1 of an act commonly and acquiesced in by succeeding assemknown as the "Appropriation Bill," blies, until the act of 1887 again passed by the Fifteenth Legislative changed the date of the beginning of Assembly and approved by the Gover- the sessions. Among the other acts nor on the 10th day of April, 1889.

This action is brought for the pur- ham, another providing for the issue pose of having a judicial determina- of bonds and the levy and collection tion as to the validity of said act, it of taxes; others were passed amending being contended that at the date of the revenue laws and the statute of the passage and approval thereof the limitations. During the session the Fifteenth Legislative Assembly had no council directly gave its assent to legal existence, for the reason that this legislative construction in rejectthe limit of time within which it could ing a resolution to adjourn at the end by the organic law lawfully remain of the sixty consecutive days. in session had expired, and therefore it had become at said date functus from the beginning has been uniform

The journals show that the Fif- days of actual session. teenth Legislative Assembly began its session on the 21st day of Janu- (77 Ala. 608,) the Supreme Court of ary, 1889, and adjourned "sine die" upon the 10th day of April, 1889, that the practical construction of the that the assembly was in actual ses- upon the term "days" in a similar ture of the national legislature. sion but forty-eight working, or provision of the constitution of that legislative days, the last day being state.

to sixty days duration." Said section adjournment. This question has been and powers of the cra being in its terms mandatory, must repeatedly considered by the Judiciary | The section be construed. It therefore remains committees of the Senate and House containing the for us to determine which of the two views contended for at the hearing of sions of the general assembly since sessions of consecutive days from the day upon would hesitate to depart from the set- the law-mai which the assembly convenes; or, tled legislative construction of the ance. We shall upon the other hand, that the sestion is limited to sixty Legislative or of the serious consequences which ed in this case, when correctly, if we may upon the other hand, that the ses fundemental law, especially in view solution of the main ques public holidays and days of interme-

After the careful consideration the the subject matter as well as the evigreat public interests involved in dent purpose and intent of the act of tive assemblies of this controversy demand we have ar- 1580, warrants the interpretation we tories of the Uni rived at the conclusion that the latter put upon it. Congress certainly con- limited to sixty

We think the true view is that the Organic Law of a Territory bears the not being judicial days, are not to be the session is limited to sixty legislasame relation to the government of considered as days of a term of court. tive working days, exclusive of Sunthe Territory as the Constitution of a 22 Grattan, 924; 46 Missouri, 17; 93 days, public holidays and days of instate sustains to the people of the | J 11, 203.

pressly excepted.

21 Penn., 162.

law of a Territory takes the place of acted by Legislative Assemblies. a similar provision in the constitution of a state. A well established rule is that the contemporaneous construction of a constitutional ty for whose guidance it was intended, State Bank of North Carolina, 6 21st clearly, palpably and plainly consecutive days. Peters, 39; Caldwell vs. Carrington, violated the fundamental law of the In other words

Darby 12 Wheat, 206,

ace to the practice of the courts in or hesitation on our minds." the matter of juries, he said; "This territorial legislatures of the Organic the court say: "we must premise that languague is directory, only. Sq that tion; for appropriations are made upon of the period, beyond which the sesacts in relation to their legislative so much respect is due any legislative it seems to us to be primarily essenauthority, especially when considered act solemnly passed and admitted tial to a satisfactory solution of the no instance where the pertdiem of meaning. It means the actual hours, duration" the other says: "Shall in connection with the fact that none into the statute books that a court of problem in hand, to first determine, members, or expenses incurred for days, weeks, &c,, elapsing—the one limited to sixty days duration." of their jury laws have been disapproved by Congress, though any of decide its validity will presume it to language is mandatory, or directory them could be annulled by such disap- be constitutional until the contrary only.

which the assembly first met and the 36 Mo. 277.

After forty consecutive days had expired, the more important acts of the session were passed; among them being what was known as the "Howell Code." Under the provisions of this code of laws the government of the territory was for the most part administracy was for the maning of the simple doubt to the maning of the simple doubt to the power is generally mandatory, whilst the place of the lederal law, viz.: that the legislature is limitous doubt to the maning of the simple doubt to the makers to impute a doubt to the power. The grant of the transcallation with the principal part of the size of the session. But the principal part of the size of the session was passing a fundamental law to prove the maning of the simple of the size of the size of the session was passing a fundamental law to prove the mand

ode of 1887.

The validity of these laws were effect would be to annul many of the mandatory has been construed to be supposed to be critical in the civilization was intended to be sixty, or The validity of these laws were effect would be constructed to be supposed to be critical in the civinzation was intended to be sixty, or never questioned, and the courts as laws now in force and thus disturb directory, will be found upon critical tion and learning as in the older com-THE END REACHED IN OUR DUAL well as subsequent legislatures, re- and unsettle the public credit, destroy examination, to be where there has munities. cognized them as equally operative private rights and bring disaster upon been an irregular, or improper, exerand binding with the other acts of the Territory.

If it be contended that the act of we hold that the appropriation bill conferred. 1880, amending Section 1850, Revised passed by the Fifteenth Legislative Statutes, is to be construed differently from the provisions of the Organic is a valid law, and that the plaintiff is the plantiff. In the case at the bar, or double meaning? entitled to his writ. ject, and that legislative construction

The writ will issue. upon the latter provision cannot there-Kibbey, Justice, concurs and Wright. Chief Justice, files dissenting opinion. fore be considered, we find that the

first legislative assembly to meet after OPINION OF CHIEF JUSTICE WRIGHT. said act took effect, viz.; the eleventh The court, in the majority opinion, legislative assembly, convened upon rightly hold that section 1825 of the the third day of January, 1881, and finally adjourned upon the twelfth day of March following, a total of but the opinion holds that, when consixty nine consecutive days. Deductgress said, in said section, that the ssion of the said legislative asseming as before the intervening Sundays, and we find that the assembly was lies of the various territories should we now proceed to analyze this section, and endeavor to show that the language employed by congress necessarilly limits sessions of the territorial legislative assemblies to sixty con-15th legislative assembly of this terriwas one creating the county of Gratory, having begun its session on the 21st day of January 1889, was not, and could not have been, without the permission of congress, in legal session on the 10th day of April 1889. There is no disputes as to the facts.

The said 15th legislative assembly, having begun its regular session at at the time fixed by law, viz: on the 21st day of January, 1889, sixty con-Thus the legislative construction secutive days from that date, expired on the 21st day of March, 1889; and it that the sessions are limited to sixty is admitted that the act in question was passed on the 10th day of April So that the only and vital Alabama distincly recognizes the rule question is; was said assembly in legal session on the said 10th day of April being the date of the approval of legislature will govern in a case of 1889? Clearly it was not. That assaid act. The journals further show this kind, and gave a like construction sembly was wholly and simply a crea-

drawing the milk of its existence from nominated the forty-eighth day of e session.

In construing the constitutional congressional maternity and living, moving and having its being in the The restriction upon the length of shall not remain in session * * * will of congress, an expressed in the the session of the Legislative Assem- longer than fifty days," Justice Somer- federal statutes. It therefore had no bly is found in section 1852, R. S. U. ville, in that case said: "satisfied real legal being outside of those S., as amended Dec. 23, 1880. Said that fifty days means fifty legislative statutes. Necessarily it existed, if at section as amended reads us follows; days, working days, exclusive of the all, according to their provisions. To 2 "The sessions of the Legislative Sundays and other days upon which those statutes then, to the expressed Assemblies of the several territories the Senate and the House concur in will of congress, the creator, must we

phlies, is of But aside from the legislative con- precisely what construction, we think a consideration of language it employed in this section.

templated that emergencies might the latter clause madatory, or direc-Said section is a part of the Organic arise that would render legislation tory? The court incidently, says it is law of the Territory. It is proper to between fixed dates practically impos- mandatory in its terms; but the connsider, therefore, the relation which sible. At any rate, that upon Sundays clusion arrived at indicates that a disthe Organic act and other acts of Con- and holidays no legislation would or cretion is implied. We are unable to amendatory or supplementary could be done. If the purpose was to perceive how this can be; because, if thereto bear to the government of include these, other language more the meaning of this language is clear the territory. It was argued at the clearly expressing this intent would and indubitable and is mandatory, it hearing of this case that Congress very probably have been used. A dishad granted to the Legislature of a tinction should be made between being susceptible of but one true territory certain limited powers and statutes which restrict the number of meaning. Yet the court says: "It restricted their exercise to the partie- days upon which acts may be perform remains for us to determine which of ular mode and manner expressed in ed. and those whichmerely fix the ulter- the two views, as to the proper conits grant. That this grant is in every jor limit of time within which a single struction to be placed upon said sec instance to be strictly construed, and matter may be transacted. In the tion, contended for at the hearing of that the Legislature having acted in former, Sundays and other days when the case, we should adopt, viz: upon a particular manner, no inference is labor or business cannot be transacted, the one hand, that the session of the therefore acted within the limit of its these are usually included, unless ex- to sixty consecutive days from the

day upon which the assembly con-Thus it has been held that Sundays, venes; or upon the other hand, that termediate adjournment." There appears no good reason why The decision then construes the

The Supreme Court in National the same rule should not apply to language to mean sixty legislative, Bank vs. County of Yankton, 11 the construction of the term "days" working days, exclusive of Sundays, Otto, 129, has said: "The Organic when applied to matters to be trans- holidays and days of intermediate adjournment. It seems to us that if Were we in doubt as to the cor- this construction is correct, it makes law of the local government." If the rectness of the above construction, the language necessarily directory, view we have given be correct, then what would be the duty of the court and not mandatory. For the reason t follows that the same rules of con- in the premises? The Legislative that sixty legislative, working days, struction apply and like effect must Assembly, a co-ordinate branch of exclusive of Sundays, holidays and be given to any part of the Organic the government of the Territory, act- days of intermediate adjournment, law as would apply and be given to ing under like solemn obligation and would necessarily make the session responsibilities with ourselves, has endure longer than sixty consecutive passed the act, the validity of which days; and therefore, as the greater inis in question, which act has been cludes the less, while the session might approved by the Governor, who has endure for seventy or eighty consecprovision put upon it by the authori- taken a like oath to support the Con- utive days, counting Sundays and stitution and the laws of Congress, other days of intermediate adjournparticularly if acquiesced in for a and now, are we to declare it invalid? ment, in order to consume sixty legisong term of years should be followed If we believe that the legislature in lative working days, the limitation

by the courts. See United States vs. attempting to legislate after March might also be construed to mean sixty In other words, the real point of Peters 103; Edwards Lessee vs. territory, then most unquestionably difference is: plantiff's counsel conit is our duty so to declars. While tend that the above language is di-That this rule applies to the conthis is true, we must bear in mind rectory only, and admits of discretion, struction of the organic acts of the that among the fundamentals of the while the defendant's counsel and the reads: "No legislative assembly of a reads: "No legi territories is asserted by Chief-Justice law almost, is the proposition that friends of the court, contend that it is Chase in the case of Clinton vs. Eng- "we can declare an act void only when mandatory and admits of no discreit violates the constitution" (or organ-ic law) "clearly, palpably, plainly and that the most carnest and strenuous slature of Utah to legislate with refer- in such a manner as to leave no doubt argument of plan iff's learned counsel, including the very able argument of In Adams vs. Howe, 14 Mass, 345, Shield, filed herein, were, that the said to a definite period of sixty days dura-

proval, confirms the opinion warrant- clearly appears, so that in any case of Now at the outset, we say this ed by the plain language of the or- the kind substantially doubtful the language is clearly mandatory, that it "Shall be limited to sixty days dura- ginning was immaterial; but for sixty consecutive days. ganic act itself that the whole subject law will have its force. The legi-la- is really surprising that any one should tion," and we think it and other inmatter of jurors in the territories is ture is in the first instance the judge question its true import. It might be stances, referred to, clearly indicate mitted to the territorial regula- of its own constitutional powers, and observed that no mandatory phrase or the legislative intent; that congress it is only when a manifest assumption sentence was ever employed that was said just what it meant, and meant A provision in the Organic Law of New Mexico, which by the act organizing the Territory of Arizona, was made applicable to the latter, was to the effect that no session of the doubtful or questionable whether the subtile agent covered the void earth. legislative assembly could exceed the legislature has exceeded its limits The teacher says to the pupil "get the judiciary cannot interfere, though your lesson," it is both a direction and If it had been the intention of con-The first legislative assembly of the it may not be satisfied that the act a command. If the father says to the gress to rest any discretion, if its purnew Territory convened by procla-mation of Governor Goodwin on the To the same effect, among others son, "go to the stable and bring my nor bornor Goodwin on the To the same effect, among others son, "go to the stable and bring my horse by the back gate into the yard,"

From the forgoing considerations the attempt to exercise a power not law, which in its operation was to so self, has no inherent power of conven-

For instance, the election cases re-Assembly and approved April 10, 1889, ferred to by the learned counsel for guage of intricate, doubtful, ambiguous convene. So that, as the Supreme of Dakota territory ex. rel. Smith Dist. the power granted to the legislative biennial session for only sixty days: language of the simplest, most certain powers, duties, and sessions are de- way vs. Schnauber, 1 Dakota 249. See and the attempt to hold longer than and unequivocal meaning? And is fined and limited by the act organ- also State ex rel. Perry vs. Arringsixty days was attempting to exercise this not exactly what congress has izing the territory, and the amend-ton, et al, Sup. Court of Nevada, 735; a power not conferred. Mandatory done? Is there any possible room for ments thereto; and it derives no life National Bank vs. County of Yanklanguage may be, and is often held construction in determining the true or power from any other source. It is ton 2 Dakota 236, and 101 U. S. 126 construction in determining of the phrase, "Shall be authorized to hold a biennial session and Miners Bank vs. State of Iowa, 19 in its terms seldom is, and rarely is held to be, limited to sixty days duration? Is it mandatory. The one is used generally in a permissive sense; the other, in a yond reasonable doubt, that congress tend the session beyond the time specific the days" and there is no provision to exist the days and there is no provision to exist the days and there is no provision to exist the days and there is no provision to exist the days and there is no provision to exist the days and there is no provision to exist the days and there is no provision to exist the days and there is no provision to exist the days and there is no provision to exist the days and there is no provision to exist the days and there is no provision to exist the days and there is no provision to exist the days and there is no provision to exist the days and there is no provision to exist the days and the exist the days are the days are the days are the days and the exist the days are the days

ors employ when addressing inferiors. "limited" and "duration." It is generally used where the party The word "limited" means narrow legislature, which had given repeated of the government. It is generally used where the party using it has the power to control the action of the party to whom it is addressed. Hence the intention of the secutive days; and therefore that the party using the language, should time, to hem in, to confine, to bound. control the construction put upon it, to limit, to restrict, etc. unless the language employed is so Mr. Webster defines the word "dur certain and indefinite.

action, its language is so clearly direc-tory, as not to admit ofdoubt.

This, however, has rarely happened. for now we assert that, with almost by the legislative assembly for the sesgress in legislating for the territories, ous powers, duties, sessions &c., of rectory, but in a mandatory sense. Let us see; Sec. 1842 R. S. U. S. says: the governor, &c.'

Is this not plainly mandatory? Would any one pretend that if the ple, how certain the meaning. legislative assembly were to attempt exist elsewhere?

tion: "The legislative assembly shall ment are not to be counted as parts consist of a council and house of of the session, the legislature would representatives. The members of both not be in session during such days: branches of the legislative assembly and that necessarily have to possess shall have the qualifications of voters the power to hold any number of dis-

They shall be chosen for the term | conferred power to hold one session the qualifications, powers, duties, ses- days only from said beginning. ritorial legislative assemblies; and is there could be but one regular legal sembly, passed after the expiration of there any possible room for the faint- session of the territorial legislative as- the sixty consecutive days, are still est doubt that, in each instance, the sembly; and it is just as impossible resintegra. word is used in its absolute, manda- that the session could legally exist, But even to the modified extent to

may be biennial, but they shall be: not that each legislative assembly may fix by law the day of the commencement of its regular sessions, but it bers may reside in their respective districts or counties, but they shall reside therein. Again the latter part of section 1886, Rev. Stat., U. S., reads: "No session of the legislature shall be held until the appropriation for the expenses shall be made, etc."

Does this mean that such session may be held, whether the appropri tion be made or not? On the other sixty days from its beginning. Hence limitations to mean seventy conhand, is not the inference irresistible the days of its possible existence were secutive days from the beginning of that, unless such appropriation were with unerring certainty numbered. first made, such session would be void? In other words, is not the appropria- the legislative assembly its session Arkansas adopted in 1874, provides der any pretence, exceed the amount upon the dial-plate in unmistakable assembly, &c." nual expense.

assistant U. S. attorney general, sessions of the legislative assemblies To us the language used imports no territorial legislative assemblies, conbeen paid. This session then, sheds light upon the meaning of congress, when it employed the language, United States shall be limited to sixty days duration.

pose had been that the session might be indefinite in duration, but that conthis side of the limit, they cannot go the nineteenth of March, 1880. 26th day of September and remained in session until 10th day of November, 1864, a total of 46 consecutive days. Deducting ten Sundays that intervened between the day upon which, 333; State vs. Cummings, which the assembly first met and the account of the same effect, among others are the following cases: City of Lexing the language is also a direction and its sace of the limit, they cannot go the same effect, among others are the following cases: City of Lexington vs. McGuillan's Heirs, 9 command: but if the son should bring it; would not the language of the language execution of power, or authority con- but in no event will the United States we have already seen, if this be not sixty days in duration" are mandatory. day upon which it finally adjourned, and we find that it was in session forty working, or legislative days.

After forty consecutive days had excised the more inverted the more inverted the more inverted to the consecutive days in this be not sky days in the expenses thereof for more journment be excluded from the session itself becomplished the more inverted to the more inverted to the consecutive days in the consecutive days in the expenses thereof for more journment be excluded from the session itself becomplished to the more inverted to the consecutive days in the consecutive days in the expenses thereof for more journment be excluded from the session, which it finally adjourned, and the more inverted to the consecutive days in the consecutive days.

In view of this well settled rule recognized in the foregoing cases apart than sixty days." And is it not in an interest with the consecutive days of intermediate adjournment between the power conferred, and the more inverted to the consecutive days in the expenses thereof for more journment be excluded from the session itself becomplication.

The provided the more inverted to the consecutive days in the consecutive days.

The provided the more inverted to the consecutive days in the consecutive days.

The provided the more inverted to the consecutive days in the consecutive days.

The provided the more inverted to the consecutive days in the consecutive days.

The provided the more inverted to the consecutive days in the consecutive days.

The provided the more inverted to the consecutive days in the consecutive days.

The provided the more inverted to the consecutive days in the consecutive days.

The provided the more inverted to the consecutive days in the consecutive days.

The provided the more inverted to the consecutive days in the consecutive day

intended to use the above language ified." (See 1 Dakota, 249).

absurd, or dubious in meaning, as to ation" to mean the power of endurrender such intention absolutly un- ing, continuance in time; the portion ertain and indefinite.

of time during which anything exists, of the serious consequences that rendered to the Hon, the secretary of the language of the parent to Adding the latter definition of the would ensue; the court holding that the interior, on the 16th day of the child, of teacher to the pupil, of word duration to the phrase it then master to the servant, the principal to would read: "Shall be limited to an such construction in doubtful cases, Miller, attorney-general of the United the agent. Now congress is the prin- existence of sixty days." Is it not the question being no resintegra. cipal or master, the superior; the leg- evident that the great primal purpose islative assembly is the agent or ser- of congress was to control within fixed vant, the inferior. It is for the prin- definite limits the sphere of legislacipal or master, the superior, not only tive action in these territories? And to direct, but to command: and it is that when the session began, it should for the agent or servant, not only to continue to exist, to endure, for only follow, but to obey. Wherever con-gress has intended to give these Is there any room for construction agents, this inferior, a discretion in here? Or rather, can there be but one true construction?

Is the true meaning of this section at all doubtful? Does it not necessariand but few instances can be found. ly mean that, whatever the time fixed unbroken uniformity, wherever con- sion to begin, it could not continue to sed after the expiration of the sixty seems clear, that any attempted legisexist, as a legal organized body longer has spoken with reference to the var- than sixty days from said beginning? Sixty days of lawful session-sixty the word "shall" in not simply a di- is all. It means sixty days counting sage. one after another including Sundays, "Every bill which has passed the leg- adjournment. If congress had meant

fore it becomes a law, be presented to of sixty days duration, it would have Nor will it do to say there has been It must therefore be regarded as a re-How plain the language, how sim-Although adjournments are had. Legislative Assemblies of this Territo- 1889, on the same subject. And as to pass a law without presenting it to the sessions go on. This is funda- ty construed the limitation to be sixty already indicated, we regard these the governor, it would be worth the mental. Mr. Blackstone says; "An legislative, working days, presumably opinions by the Attorney General as paper upon which it was written? adjournment is no more than a con- the other thirteen legislative assembles of the main question involved Again sec, 1846, of said statutes in its tinuance of the session from one day first sentence, says: "The legislative power in each territory shall be vested If Sundays, days of temporary adjourn."

In the case at oar. With the Attorne mean sixty consecutive days; for we general, we hold that any attempte must infer that if any of the remain-legislation after the sixty consecutive assembly." Can there be any discre- days of the session then for those days construed limitation to be sixty legistion here? May the legislative power the session would not endure. Is it lative, working days, this resource of this territory, having by operation not plain, that, if Sundays, holidays would have been drawn upon to of the law of its being, Further, we read in the same sec- and all other days of temporary adjourn- strengthen the position taken. consecutive days. tinct sessions? But congress has only of two years and the sessions of the of sixty days duration; how then can argument, nor strength to the posi-

respective legislative assemblies shall it hold more than one session? Again, be biennial. Each legislative assem- to state it little differently, if Sundays, bly shall fix by law the day of the days of intermediate adjournment, etc., commencement of its regular sessions. are not included as parts and parcels on to put its construction upon the The members of the council and house of the session, the time measure by purview of that limitation. That conof representatives shall reside in the these days being no parts of such struction should be according to the district or county, for which they are session, the session necessarily ceases true tenor and effect of the statute respectively elected. Here we have for that time; but the only and true unaffected by past illegal acts, acthe use of the word "shall" re-occur- meaning of the language used by con- quiesced in, or rights to be hereafter ring seven different times in this one gress is that, when the session begins, affected under them. section; and all referring directly to it endures, continues to exist, for sixty This is plainly so, for all legal ques-

It is not that the assembly may days from its beginning. Another, to stand alone. Every other state consist of a council and a house but it shall so consist; not that the members of both branches may have the used to limit the duration of the ses- limited by their constitutions to a qualifications of voters, etc., but they sion of the legislative assembly to certain number of days, seem to have qualifications of voters, etc., but they sion of the registative assection, to shall have such qualification; not that the history of the times, at and retained no doubt that the limit ation meant consecutive days.

The constitution of Missouri Art they may be chosen for two years, but the history of the times, at and re- ation meant consecutive days. they shall be; not that the sessions cently before the passage the Act, was The constitution of Missouri, Art. shall fix the day; not that the mem- surrounding circumstances and con- vices as may, from time to time, be

tion a condition precedent to the legal might die before the expiration of the that "The regular biennial session" (of existence of the session? And still full number of days; but at all events, the general assembly) "shall not exterritory shall, in any instance or un- the hour of dissolution was marked elected to each house of said general appropriated by congress for its an- phrase. Hence, we say again, that congress not only used the language of limitation in this section are very Here again congress has clearly in- of said section in a directory, but more similar in their import, to the words dicated its purpose to be to limit the emphatically in a mandatory sense. of limitation upon the session of the longer periods than sixty days have after the other—from the time of the Every general assembly of Arkanof twenty-four hours each have passed. adoption of this constitution, has For obvious reasons the time of be- construed this limitation to mean equally obvious reasons, the time of And in Trammell vs. Bradley, ending was material. Congress had County Judge, See 37th Ark, page to pay the bills of expense; which could not be affected by the beginning have passed directly upon the meanof these sessions, but would necessariing of this limitation; and they use plain, unambiguous language, that ly be seriously affected by their end-the sessions of the legislative assem-Whilst therefore, it is evident that a had begun on the tenth of January discretion was intended as to the time | 1880. of their beginning, it is equally evident | During the session, by concurrent that none was intended as to the time resolution, and signed by the Govof their ending. The limit is fixed, ernor, the session was extended and

By the violation of the members of

fifty days limitation meant fifty legis- final resort-he supreme court of the lative, working days; and that the United States-are entitled to the court followed that construction-as highest consideration, and should Mr. Justice Somerville, who delivered have the binding force of exalted the opinion of the court, said, because authority. In an official opinion,

long been acquiesced in; where sub- pectively, said: stantial rights have grown up and of its session, have not been acquiesced atory. in. The validity of those acts has This language was uttered subse-

holidays and any days of temporary give a construction retroactive in its filed with the argument of the learn islative assembly of a territory shall,be- to exclude these days from the limit will truly decide a living vital issue. This is apparent from the face of each.

tain that a number of those assemblies did construe the limitation to be sixty

And therefore the territorial legislative construction put upon the limitation, lends neither force to the

For the first time, the Supreme Court of this Territory is called up-

tions and rights, arising under the So that it is simply impossible that acts of the Fifteenth Legislative As-

endure for a longer period than sixty which the Alabama case goes, it seems

rife with complaints of extravagances 4, Sec. 16, provides that "The memand reckless expenditure in more than berers of the general assembly shall one of these legislative assemblies, so severally receive from the public treasthat construing that in the light of ury such compensation for their sertemporaneous history, we say that it provided by law, not to exceed five is evident that the purposes of con-gress was to absolutely control, to dollars per day for the first seventy days of each session; and after that circumscribe, to hem in, to restrict, not to exceed one dollar per day for within definite limits, these legislative the remainder of the session, &c. assemblies as to the period of their This constitution was adopted in 1875, existence; and to fix beyond the line and every general assembly of Misof cavil or discussion the fact that the souri, that has held a legislative session session could only exist, endure for since, has construed the seventy days

the session. Section 16. Art 5, of the State of

It will be observed that the word beginning of the session till sixty days sas, that has held a session since the

"The sessions of the territorial legis power to convene, call itself into legal that period, would be invalid." To

ially when we consider that this in cases, where language apparently frontier in a large measure, were not end their session, they can only recon- indicated their view to be that the dent alone can call one or both i. e., that when the session begins been an irregular, or improper, exercise of the power granted, rather than congress, in passing this fundamental and even the British Parliament its of the session, till the sixty, or other seriously affect the people in these tion after dissolution; the Queen may Court of Utah Territory ex-rel. Halfrontier governments, would use lan- prorogue it, and it cannot of itself re- ler vs. 18 Pac. Rep., 628; Sup. Court court of Dakota says, in Treadway vs. Atty, vs. Scott, et. al, 20 N. W. R Rather, is it not more reasonable to Schnauber: "The territorial legis- p 401; Sup. court of Idaho, Stevensor assembly by congress was to hold a suppose that congress intended to use lature is a creature of congress; its vs. Moody, 12 Pac. Rep. 902: Tread-

NUMBER 1

ated views that are conflicting, we "Thou mayst be saved," is permis- not simply in a directory, but in a The court seems to rely upon the should unhesitatingly hold that the blies of the various territories should "be limited to sixty days duration," it meant sixty legislative working days, and not sixty consecutive days. We are unable to concur in this view; and to was upon the session of a state cussion. This is the great law officer

States, referring to letters of the gov-We fully agree with the court, in ernor and secretary of Arizona, bearthe case at bar, that where laws have ing dates of June 2nd and 26th, res-

"I am unable to find in either any vested under them; it is a well settled question of law, which is not covered policy of the courts not to disturb by the opinions of this department them, though they may not have been rendered to you under dates of March legal or constitutional originally. 16th, May 29th and June 19th, 1889. This was, as we have just seen, the The first of these opinions was to the rue reason for the decision in the effect that, under the act of congress, Alabama case; it was also the reason which is the organic law of the terrifor the Oregon decision. But this tory, the session of the legislature of doctrine cannot obtain here. The acts Arizona is limited to sixty consecutive of the 15th legislative Assembly, pas- days. The corollary to this conclusion consecutive days from the beginning lation after that time would be nug-

the territorial legislature, it has used days of legal, organized existence, that been questioned ever since their pas- quently to the reception by the Attorney General of the "memorandum" The court is not called upon to of Ass't Attorney General Shield, effects; but to say whether or not we ed counsel for the plaintiff herein. a uniform legislative construction on assertion and endorsement of the this subject by our legislative as-semblies. If the first and eleventh eral in his opinion of March 16th

after the 21st day of Marchi, 1889, on At all events, it is absolutely cer- the tenth day of April, 1889 it had ceased to have a legal, organized existence; and could therefore pass no valid acts.

> Hence it is our conclusion that the prayer of the petition should be de-JAMES H. WRIGHT, C. J.

H. N. ALEXANDER. A Tronney and counsellor at Law, Irvine Building, Phenix, Arizons.

A TTORNEY AND COUSELLOR-AT-LAW, Tempe, Arizona. Will practice in courts in the territory. Dr. ALBERT S. ADLER.

A TTORNEY AND COUNSELLOR-AT-LAW

FRANCIS J. HENEY. Attorney and Counsellor-at-Law.

A. G. WILLIAMS.

THOMAS, HOBSON, BARNES & MARTIN

JOHN C. LOSS.

Notary Public, Real Estate & Ins. Agt CASA GRANDE, A. T. Executes all kinds of papers with dispatch frompt attention paid to all collections. Wil ttend cases in Justice Court. Charges mode ate. Office Wells, Fargo & Co., Casa Grande. INTERNATIONAL BUREAU

Mines, Lands and General Investments. T. LILLIE MERCER, Gen. Mang'r TTORNEY - AT - LAW, NOTARY PUBLIC Conveyancer, etc. Nogales, (on Mex n line), Arizona.

GEORGE MARTIN,

Druggist and Chemist TUCSON, ARIZONA. Commercial Hotel.

THE LARGEST AND MOST COMMODIOUS
Hotel in Arizona. Center Street. Phenix in Arizona. Center Street, Phenix HERRICK & LUHRS, Props

Cosmopolitan Hotel. TO THE HOTEL

Southern Pacific Hotel,

The Sanitarium of the Southwest. In the home of the orange, banaus, date and other tropical fruits. The air is dry and pure and it is the Mecca of all afficted with pulmonary complaints.

8. S. GILLESPIE, Proprietor

U.S. Restaurant,

Casa Grande, Arizona-Everything at this Restaurant first-class. Meals 35 Cents:

By the week \$6.00.

CASH STORE.

Keeps a full assortment of General Merchandise, in the territories have incidentally DRUGS & NOTIONS. Strictly a cash business DENIER & RICHMOND.

Cor. Quarts and Fifth Streets, Miskey Building, Southwest from the Court House